

## Message Text

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ORIGIN EB-11

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P 212122Z FEB 74

FM SECSTATE WASHDC

TO AMEMBASSY BELGRADE PRIORITY

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E.O. 11652: N/A

TAGS: ETRN, YO

SUBJECT: CIVAIR - JAT BEFORE THE CAB

1. EMBASSY IS AWARE THAT CERTAIN OF JAT'S PAST CHARTER ACTIVITIES IN THE US WERE IN CONTRAVENTION OF CLEAR AND LONG-STANDING CAB REGULATIONS, ESPECIALLY CONCERNING CHARACTERWORTHINESS. THIS FACT IS ALSO WELL KNOWN TO JAT AND THE YUGOSLAV EMBASSY.

2. SOME MONTHS AGO, JAT INITIATED NEGOTIATIONS WITH THE CAB'S BUREAU OF ENFORCEMENT (BOE) TO SETTLE THE ENFORCEMENT CASE ARISING FROM THE SERIES OF VIOLATIONS UNCOVERED BY CAB INVESTIGATIONS. SUCH NEGOTIATIONS ARE CUSTOMARILY AIMED AT REACHING AN "OUT OF COURT" SETTLEMENT, WHICH NORMALLY INVOLVES A CEASE AND DESIST ORDER AND COMPROMISE FINE. THE AMOUNT OF SUCH FINE IS USUALLY CONSIDERABLY BELOW THE MAXIMUM AMOUNT THE CARRIER MIGHT BE LIABLE FOR UNDER THE LAW, AND IS RELATED TO THE SEVERITY AND NUMBER OF VIOLATIONS AS WELL AS THE DEGREE OF CARRIER COOPERATION WITH THE BOE

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IN REACHING SETTLEMENT. EXAMPLES OF COMPROMISE FINES

PAID BY AIRLINES IN RECENT MONTHS ARE: PAA-51,000 DOLLARS; TWA-87,000 DOLLARS; AEROFLOT-40,000 DOLLARS; LAKER (A BRITISH AIRLINE)-101,000 DOLLARS; KLM-25,000 DOLLARS. (IT SHOULD BE STRESSED THAT SUCH NEGOTIATIONS ARE ALMOST ROUTINELY INITIATED BY CARRIERS AGAINST WHICH THE CAB HAS A GOOD CASE SO AS TO AVOID FORMAL LITIGATION AND THE LIKELY

PAYMENT OF CONSIDERABLY HIGHER FINES. IT NONETHELESS REMAINS COMPLETELY AT A CARRIER'S DISCRETION TO ACCEPT OR REJECT BOE'S OFFERS OF SETTLEMENT; IT BEING FREE IF IT WISHES TO INSIST ON A FORMAL ENFORCEMENT PROCEEDING IN WHICH IT WOULD ENJOY EXACTLY THE SAME BENEFITS AND PROTECTION UNDER LAW AS ARE AVAILABLE TO ANY US AND OTHER FOREIGN CARRIER.)

3. IT IS ALSO WORTH NOTING THAT, AT JAT'S REQUEST, THE CAB HAS AGREED NOT TO TAKE STEPS TO HOLD UP THE CARRIER'S FOREIGN AIR CARRIER PERMIT APPLICATION (TO INCORPORATE THE RIGHTS CONTAINED IN THE NEW BILATERAL AGREEMENT) PENDING RESOLUTION OF THE ENFORCEMENT MATTER AS IT HAS WITH OTHER FOREIGN CARRIERS. FOR EXAMPLE, THE CAB REFUSED TO PROCESS LAKER'S APPLICATION FOR SCHEDULED ("SKYTRAIN") SERVICE UNTIL THE PENDING ENFORCEMENT PROCEEDING FOR CHARTER VIOLATIONS HAD BEEN SETTLED.

4. NEGOTIATIONS BETWEEN JAT AND BOE HAVE, HOWEVER, BEEN BROKEN OFF BY THE CARRIER, WHICH HAS STATED THAT THE GOY HAS TOLD IT NOT TO PROVIDE ANY FURTHER INFO TO THE BOE PENDING THE CONCLUSION OF CONSULTATIONS THE GOY IS GOING TO SEEK WITH THE USG. THE JAT ATTORNEY HAS IMPLIED THAT THE GOY BELIEVES THE US-YUGOSLAV CHARTER BILATERAL AGREEMENT WIPED THE SLATE CLEAN IN RELATION TO PRIOR JAT VIOLATIONS OF CAB REGULATIONS AND THAT IT IS THEREFORE NOT PROPER FOR THE CAB TO PURSUE AN ENFORCEMENT CASE AGAINST JAT BASED ON VIOLATIONS WHICH PRECEDED SIGNATURE OF THE AGREEMENT.

5. ON FEBRUARY 1, YUGOSLAV DGCA DJOKANOVIC DID WRITE TO THE CAB NOTING THE BOE INVESTIGATION, SEEKING INFORMATION ABOUT THE "PROBLEM IN QUESTION", AND "HOPING THAT THIS LIMITED OFFICIAL USE

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PROBLEM COULD BE SOLVED IN THE LIGHT OF PRESENT COOPERATION AND UNDERSTANDING BETWEEN OUR AVIATION AUTHORITIES." IT MAY BE THAT THIS IS THE GOY APPROACH TO THE USG TO WHICH THE JAT ATTORNEY HAS REFERRED. IF SO, IT HAS NOT ALTERED THE SITUATION SINCE, AS NOTED BELOW, BOTH JAT AND THE YUGOSLAV EMBASSY HAVE BEEN INFORMED IN DETAIL ABOUT THE PROBLEM AND SINCE THE MATTER DOES NOT APPEAR AN APPROPRIATE ONE FOR INTERGOVERNMENTAL RESOLUTION.

6. ON THIS LATTER POINT, A DISTINCTION MUST BE MADE BETWEEN THE ISSUE OF ELIMINATING THE REQUIREMENT FOR PRIOR APPROVAL OF INDIVIDUAL CHARTERS AND OF ERASING POSSIBLE JAT LIABILITY FOR VIOLATIONS OF CAB REGULATIONS. IN RELATION TO THE FORMER, THE NEW AGREEMENT WILL ELIMINATE THE PRIOR APPROVAL REQUIREMENT UNTIL AND UNLESS PROVISIONS

OF ANNEX A, II, A (3) (F) MAY BE INVOKED AND IMPLEMENTED. HOWEVER, IN RELATION TO THE MATTER OF JAT VIOLATIONS, ON SEVERAL OCCASIONS LAST AUGUST AND SEPTEMBER WE DISCUSSED WITH REPRESENTATIVES OF JAT AND/OR AN OFFICIAL OF THE YUGOSLAV EMBASSY IN WASHINGTON THE PROBLEMS JAT WAS ENCOUNTERING AND UNEQUIVOCALLY ADVISED THEM THAT SIGNATURE OF THE NEW AGREEMENT WOULD NOT REPEAT NOT AFFECT THE YUGOSLAV CARRIER'S POSSIBLE LIABILITY BEFORE THE CAB FOR ALLEGED VIOLATIONS OF CAB REGULATIONS-WHETHER SUCH VIOLATIONS TOOK PLACE BEFORE OR MIGHT OCCUR AFTER THE SIGNATURE OF THE AGREEMENT. LAST SUCH APPROACH WAS ON SEPT. 27 WHEN ACTING DCM STRBAC WAS CALLED IN (SEE STATE 192635).

7. IN VIEW OF THE STATUS OF THE CAB AS AN INDEPENDENT REGULATORY AGENCY AND, WITHIN THE CAB, OF THE BOE HAVING BROAD DISCRETIONARY ENFORCEMENT AUTHORITY, WE DO NOT BELIEVE IT IS APPROPRIATE FOR THE DEPARTMENT TO ENTER INO BILATERAL DISCUSSIONS WITH THE GOY CONCERNING ALLEGED JAT VIOLATIONS OF CAB REGULATIONS. WE ARE, OF COURSE, PREPARED TO LISTEN TO ANY REPRESENTATIONS THE GOY MAY WANT TO MAKE, BUT--ABSENT SOME EVIDENCE THAT THE YUGOSLAV CARRIER IS BEING TREATED DIFFERENT FROM OTHER FOREIGN AIRLINES (AND WE ARE NOT AWARE THAT ANY SUCH EVIDENCE EXISTS)--THE DEPARTMENT CANNOT INTERCEDE WITH THE CAB ON JAT'S BEHALF. (IF, ON THE OTHER HAND, THERE HAD BEEN SOME LIMITED OFFICIAL USE

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INTERGOVERNMENTAL UNDERSTANDING COVERING JAT'S POSSIBLE VIOLATIONS, THE DEPARTMENT WOULD, OF COURSE, HONOR ANY COMMITMENTS IT MIGHT HAVE MADE AND MAKE AN APPROPRIATE APPROACH TO THE CAB.)

8. EMBASSY IS REQUESTED TO APPROACH APPROPRIATE GOY OFFICIALS ASAP AND SEEK CLARIFICATION OF THE APPARENT INSTRUCTIONS TO JAT TO BREAK OFF ITS NEGOTIATIONS WITH THE CAB. IF IT DEVELOPES THAT GOY IS TAKING STANCE NOTED PARA 4. ABOVE AND/OR REFERS TO DJOKANOVIC'S FEBRUARY FIRST LETTER TO THE CAB, DRAWING ON AS MUCH OF THIS MESSAGE AS DEEMED APPROPRIATE, EMBASSY SHOULD URGE THAT JAT BE ADVISED PROMPTLY TO RESUME ITS NEGOTIATIONS WITH THE CAB SO AS TO AVOID MORE STRINGENT MEASURES BEING TAKEN. (THE CAB HAS WHAT IT BELIEVES IS AN "OPEN AND SHUT" CASE IN RELATION TO

MANY JAT VIOLATIONS AND, SHOULD THE MATTER END UP IN A  
FORMAL ENFORCEMENT PROCEEDING, IT IS HIGHLY LIKELY THAT  
THE FINAL FINE AND PUBLICITY WOULD BE CONSIDERABLY GREATER  
THAN IF A COMPROMISE SETTLEMENT CAN BE WORKED OUT.)  
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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** TREATY VIOLATION, SUPPLEMENTAL AIRLINES, AVIATION REGULATIONS, AVIATION AGREEMENTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 21 FEB 1974  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** morefirh  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
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**Drafter:** PJGLASOE/CAB:WBURCH:DAP  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
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